In the High Court of Punjab and Haryana at Chandigarh

C.R. No. 6782 of 2005
Date of Decision: 2.11.2006

Smt. Phool Kaur and others **---Petitioners**

Vs.

Naroti Dass and others **---Respondents**

Coram: Hon'ble Mr. Justice Surya Kant

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Present: Mr.Sanjiv Gupta, Advocate,
for the petitioner.
Mr.Saurav Bajaj, Advocate,
for the respondent.

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Surya Kant, J.(Oral)

This revision petition is directed against order dated 16.12.2005 passed by the learned Additional District Judge, Karnal, whereby he has allowed an application under Order 41 Rule 27 CPC moved by the respondent-defendant for leading additional evidence.

Vide the impugned order the additional evidence which has been permitted to be produced is consisting of certified copies of the plaint, written statement and some statements made by the witnesses in an earlier civil suit. Admittedly, the judgment rendered in that previous suit has already been produced on record and is exhibited as D-4.

Assailing the aforesaid order, it is contended on behalf of the plaintiff-petitioner that additional evidence could be allowed to be produced by the first appellate court only at the time of decision of the appeal

and since the main appeal is still pending, it cannot be said that the documents produced in additional evidence are necessary to pronounce judgment in appeal in a more satisfactory manner. Reliance has been placed on a judgment of Hon'ble the Supreme Court in **State of Rajasthan Vs. T.N. Sahni** 2001 (1) PLJ 524.

On the other hand, learned counsel for the respondent-defendant contends that since the judgment, Ex. D-4 has already been produced in evidence, the copies of the plaint, written statement and statements of some of the witnesses have been produced only to facilitate the first appellate court to appreciate the nature of controversy which was adjudicated in the previous suit vide the said judgment Exhibit D-4.

Though,in view of what has been held by the Apex Court in T.N.Sahni's case (supra) it would have been more appropriate for the first appellate court to decide the application for additional evidence at the time of decision of the appeal itself. However, in the facts and circumstances of the present case, where the judgment in the previous suit is already exhibited as D-4, the first appellate court does not appear to have committed an error of such a nature which may warrant interference by this Court, particularly when no prejudice of any kind has been shown to been caused to the petitioners. Moreover, the record of the previous suit could otherwise be summoned and perused by the first appellate court in order to appreciate the nature of controversy which was adjudicated vide judgment Ex. D-4.

For the reasons aforestated, I do not find any merit in this

revision petition.

This petition is accordingly dismissed.

(SURYA KANT)
JUDGE

November 2, 2006
paramjit